



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date:	Enrolled	Bill No:	Senate Bill 947
Tax Program:	Property	Author:	Committee on Governance and Finance
Sponsor:	Board of Equalization California Assessors' Association	Code Sections:	See Below
Related Bills:	AB 1422 (AR&T) AB 188 (Block)	Effective Date:	01/01/12

BILL SUMMARY

This bill contains **Board of Equalization (BOE) sponsored provisions** related to the property tax, to do all the following in the Revenue and Taxation Code:

- Amend Revenue and Taxation Code Section 63.1 to expressly allow the parent-child exclusion for transfers of interests in cooperative housing corporations. (Housekeeping)
- Amend Section 69, 69.3, and 69.5 to clarify the definition of "substantially damaged or destroyed." (Housekeeping)
- Amend Section 74.5 to update the citations to the building codes for purposes of the new construction exclusion for seismic safety. (Technical)
- Amend Section 74.6 to correct the reference to the California Constitution as amended by Proposition 13 of 2010. (Technical)
- Add Section 271.5, repeal Section 75.23, and amend Section 531.1 to clarify that property tax exemptions cease as of the date of sale or transfer of the property. (Housekeeping)
- Amend Section 276.2 to extend the time a claimant may file for the disabled veterans' exemption upon a property's eligibility after the lien date. (Housekeeping)
- Amend Section 278 to specify that the disabled veterans' exemption notice shall be mailed annually, prior to the lien date, to claimants who received the exemption in the immediately preceding year. (Housekeeping)
- Amend Section 483 to clarify the local body through which an assessee must appeal a penalty for failure to timely file a change in ownership statement. (Housekeeping)
- Amend Sections 830 and 862 to expressly provide in statute that state assessee penalties for failure to timely provide information may be partially abated. (Housekeeping)
- Amend Section 4831 to allow floating homes and manufactured homes to receive a decline in value after the roll has closed. (Housekeeping); and,
- Amend Sections 11551 and 11596 of the Private Railroad Car Tax Law to raise the statutory threshold from more than \$15,000 to more than \$50,000 for

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requiring a 10-day public record of proposed determinations prior to granting refunds or cancellations of tax. (Housekeeping)

This bill contains **California Assessors' Association (CAA) sponsored provisions** related to the property tax, to do all the following in the Revenue and Taxation Code:

- Amend Section 69.5 to give homeowners transferring a base year value from one home to another up to 6 months to request that any new construction to the new home be included in the base year value transfer.
- Amend Sections 1150, 1154, and 5303 to update obsolete references in the definition of "certificated aircraft," "air taxi," and "aircraft;" (Technical) and
- Amend Section 2821 to change the period that a person filing an affidavit of interest has to apply to the tax collector to have a parcel separately valued. (Housekeeping)

ANALYSIS

PARENT-CHILD CHANGE IN OWNERSHIP EXCLUSION

Allow the exclusion in transfers of interests in cooperative housing corporations.

Revenue and Taxation Code Section 63.1

CURRENT LAW

Parent-Child Change in Ownership Exclusion. Proposition 58, which was passed by the voters of California on November 4, 1986, added subdivision (h) to Section 2 of Article XIII A of the California Constitution. Subdivision (h) provides, in part, that the terms "purchased" and "change in ownership" shall not include the purchase or transfer of the principal residence, or the first \$1 million of the full cash value of all other real property, between parents and their children, as defined by the Legislature. Assembly Bill 47 (Ch. 48, Stats. 1987) added Section 63.1 to the Revenue and Taxation Code to implement Proposition 58. Proposition 193, passed by the voters on March 26, 1996, extended this exclusion to transfers from grandparents to grandchildren under certain circumstances.

Section 63.1(c)(8) defines "real property" as land and improvements per Section 104 and specifically excludes any interest in a legal entity.

Change in Ownership – Cooperative Housing Corporations. Revenue and Taxation Code Section 60 provides a general definition of "change in ownership" which is a transfer of present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

In addressing the practical application of a change in ownership of a real estate project with common areas or facilities, Section 65.1(b) specifies if there is a change in ownership of a unit or lot, then only that particular unit or lot and a share in the common area is to be reappraised. These provisions apply to cooperative housing corporations. In addition, Section 61(i) expressly provides that a transfer of stock in a cooperative housing corporation is a change in ownership requiring reassessment of the property.

In a cooperative housing corporation, the corporation holds title to the project real estate, with shares in the corporation in turn owned by the project's occupants. Ownership of shares provides the right to lease and use one of the project's dwelling units. The owners also hold leasehold interests in specific units combined with proportional ownership of the shares in the cooperative housing corporation.

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A cooperative housing corporation is treated as real property for change in ownership purposes (Section 61(i)) and is specifically allowed by Section 69.5(c)(1), the over 55/disabled base year value transfer provisions. Moreover, a unit or lot within a cooperative housing corporation is eligible for the homeowners' exemption pursuant to Section 218. However, the transaction is a transfer of stock of a corporation and not a transfer of real property and Section 63.1(c)(8) precludes applying the parent-child exclusion to transfers of legal entity interests.

PROPOSED LAW

This provision amends Section 63.1 to extend the parent-child exclusion to a unit or lot within a cooperative housing corporation.

COMMENT

Section 61(i) expressly provides that a transfer of stock in a cooperative housing corporation is a change in ownership that requires reassessment of the property, unless an exclusion applies. There are relatively few cooperative housing corporations in California and the issue of the application of the parent-child exclusion to cooperative housing corporations recently surfaced. It is inequitable not to provide the parent-child exclusion to these homes and this provision would address that inequity.

BASE YEAR VALUE TRANSFERS

Clarify the definition of "substantially damaged or destroyed."

Revenue and Taxation Code Section 69, 69.3 & 69.5

CURRENT LAW

Proposition 60, which was passed by the voters in November 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell their principal place of residence (original property) and transfer the base year value to a replacement principal place of residence (replacement property) that is purchased or newly constructed within the same county. Proposition 90, which was passed by the voters in November 1988, gave the county board of supervisors the option to extend these provisions to a replacement property that is located in a different county than the original property. Proposition 110, which was passed by the voters in June 1990, extended these provisions to severely and permanently disabled persons of any age. Eight counties have ordinances implementing the intercounty option – Alameda, El Dorado, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura. All three propositions are implemented by Revenue and Taxation Code Section 69.5.

Section 69.5 also allows the transfer of a base year value to a replacement property from an original property that was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state. "Substantially damaged" means physical damage amounting to more than 50 percent of the property's current market value immediately prior to the disaster. In some locations land values comprise more than 50% of a property's total value. For example, if a home worth \$800,000 is completely destroyed in a wildfire and the bare lot is worth \$450,000, i.e. more than 50% of the property's total value, the homeowner would not be eligible for a base year value transfer even though the home itself (the improvement) was 100% destroyed. Similar language was contained in Sections 69 and 69.3, before these sections were amended by 2009 legislation sponsored by the BOE (SB 824, Ch. 67, Stats. 2009).

PROPOSED LAW

This bill amends the provisions defining “substantially damaged or destroyed” in Section 69, 69.3 and 69.5 to be consistent and enhance clarity.

COMMENT

This provision would ensure that disaster victims who decide to relocate rather than rebuild, will be eligible for a base year value transfer in situations where the land value comprises more than 50% of the property’s total value.

Base Year Value Transfers: Post Transfer New Construction**Give homeowners more time to claim.***Revenue and Taxation Code Section 69.5***CURRENT LAW**

Under existing law, real property is generally reassessed to its current fair market value whenever there is a “change in ownership.” However, under certain circumstances, property owners may avoid reassessment of a particular property by way of either a change in ownership exclusion or a base year value transfer. (California Constitution Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)

Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 may transfer their base year value from one home to another when they purchase a new home of equal or lesser value that is located in the same county. Additionally, eight counties (Alameda, El Dorado, Los Angeles, Orange, San Diego, San Mateo, Santa Clara, and Ventura) permit persons to transfer base year values from homes located in other counties. This once-in-a-lifetime benefit gives seniors “property tax relief” by avoiding the reassessment provisions of Proposition 13. Instead, by transferring the Proposition 13 protected value from one home to another, there is essentially no change in the amount of property taxes paid. These provisions are also available to persons without regard to age if they become severely and permanently disabled.

New Construction – Post Transfer. Section 69.5(h)(4)(A) provides that after a base year value transfer has been granted, the homeowner can make improvements to the new home, such as a room addition or a swimming pool, and in some cases, the new construction will not be assessed. The new construction will not be assessed if (1) the construction is completed within two years of the sale of the former home and (2) the value of the new construction plus the market value of the replacement home when purchased does not exceed the market value of the original property as determined for the original claim for a base year value transfer. To exempt the new construction from assessment, the property owner must have notified the assessor in writing within 30 days after completion of the new construction. Typically, this notification is done by filing another claim.

PROPOSED LAW

New Construction – Post Transfer. This bill amends Section 69.5(h)(4)(A) to increase from 30 days to 6 months the time the property owner has to notify the assessor when the additional new construction is complete. Because the assessor already receives copies of all building permits issued in the county, this amendment allows the assessor to automatically extend the benefit of the base year value transfer to the new construction, when applicable, without any further action or paperwork from the property owner.

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IN GENERAL

Under Proposition 13, property is reassessed to its current market value only after a change in ownership. Generally, the sales price of a property is used to set the property's assessed value and annual increases to that value are limited to the rate of inflation, not to exceed 2%.

Base Year Values. At the time of the ownership change, the value of the property for property tax purposes is redetermined based on current market value. The value initially established is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation, but at no more than 2% per year. This value is referred to as the "factored base year value." This system, established by Proposition 13, results in substantial property tax savings for long term property owners.

Base Year Value Transfers. Voters have approved three constitutional amendments permitting persons to "transfer" their Proposition 13 base year value from one home to another that is of equal or lesser value. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** Proposition 60, approved by the voters on November 4, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county.
- **Intercounty.** Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county on a county optional basis. Currently eight counties accept transfers from outside their county.
- **Disabled Persons.** Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Section 69.5 provides the statutory implementation for all three of these propositions.

BACKGROUND

AB 321 (Niello) from 2009 and AB 2579 (Niello) from 2008, in part, also proposed changes concerning notification of new construction completed post base year value transfer. These bills were also sponsored by the CAA. However, those bills would have amended Section 69.5(h)(4)(A) to delete the provision that the property owner notify the assessor when the additional new construction is complete within 30 days of completion. Because the assessor already receives copies of all building permits issued in the county, under that bill the assessor would automatically extend the benefit of the base year value transfer to the new construction, when applicable, without any further action or paperwork from the property owner.

AB 321 was held in the Assembly Appropriations Committee and AB 2579 was held in the Senate Appropriations Committee.

COMMENT

This bill gives homeowners more time to have the value of new construction to their replacement home included under the initial base year value transfer. Homeowners that do not file another base year value transfer claim to notify the assessor within 30 days of completing the new construction are barred from receiving the full benefit of a base year value transfer to which they are otherwise entitled.

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Still Must Meet Equal or Less Than Requirement. The value of the new construction plus the market value of the replacement home when purchased still may not exceed the market value of the original property as determined for the original claim for a base year value transfer.

SEISMIC SAFETY NEW CONSTRUCTION EXCLUSION

Update the citations to the building codes.

Revenue and Taxation Code Section 74.5

CURRENT LAW

Existing law provides a new construction exclusion for certain improvements made for seismic safety purposes. Qualifying construction includes the construction or reconstruction of seismic retrofitting components, as defined. The Legislature has defined seismic retrofitting components as seismic retrofitting improvements and improvements utilizing earthquake hazard mitigation technologies. Specifically, Section 74.5 defines "seismic retrofitting" as those items referenced in Appendix Chapters 5 and 6 of the Uniform Code for Building Conservation of the International Conference of Building Officials. "Improvements utilizing earthquake hazard mitigation technologies" means improvements that use technologies such as those referenced in Part 2 (commencing with Section 101) of Title 24 of the California Building Code and similar seismic provisions in the Uniform Building Code.

However, according to both the California Seismic Safety Commission and the California Building Standards Commission, California no longer uses the model building code entitled the *Uniform Code for Building Conservation* as a base document for the *California Code for Building Conservation*. There was a name change in this particular model building code to the *International Existing Building Code*, published by the International Code Council. The base document is now the *California Existing Building Code*. In addition, California is no longer using the *Uniform Building Code (UBC)* as a base document for the *California Building Code* as the *UBC* is no longer published but instead uses the *International Building Code*, also published by the International Code Council.

PROPOSED LAW

This provision amends Section 74.5 to reference the current model building code used by industry.

COMMENT

The Seismic Safety Commission and the California Building Standards Commission reviewed Section 74.5 and suggested that the statutes be amended to reference the current standards used by industry. This provision simply updates those references.

The amendments (although not indicated by strike out and underline in the bill as printed when introduced) strike out an explicit reference to Part 2 of Title 24 of the California Building Code.

DISABLED ACCESS NEW CONSTRUCTION EXCLUSION
Correct the reference to the California
Constitution as amended by Proposition 13 of 2010.
Revenue and Taxation Code Section 74.6

CURRENT LAW

The voters of California approved Assembly Constitutional Amendment 8 (Proposition 177) on June 7, 1994. This amendment authorizes the Legislature to exclude from the term "new construction" certain types of construction performed on an existing building to make the building more accessible to, or usable by, a disabled person. Proposition 177 added paragraph (5) to subdivision (c) of Section 2 of Article XIII A of the California Constitution and Section 74.6 was added to the Revenue and Taxation Code to implement its provisions.

In June 2010, Proposition 13 was approved to amend the California Constitution to make changes to the new construction exclusion for seismic safety improvements. These amendments deleted paragraph (4) of subdivision (c) of Section 2 of Article XIII A of the California Constitution and renumbered former paragraph (5) as paragraph (4). Consequently, the cross reference in Section 74.6 to paragraph (4) is now incorrect.

PROPOSED LAW

This provision amends Section 74.6 to correct the constitutional reference to reflect the recent amendments made by Proposition 13 (2010).

COMMENT

This change is purely technical.

**COLLEGE, CEMETERY, CHURCH, RELIGIOUS, EXHIBITION,
VETERANS' ORGANIZATION, TRIBAL HOUSING, OR WELFARE EXEMPTION**
Clarify these exemptions cease on the date of sale or transfer
if a property receiving an exemption is sold or transferred.
Revenue and Taxation Code Sections 75.23, 271.5, & 531.1

CURRENT LAW

Revenue and Taxation Code Section 271 allows for the cancellation or refund of taxes on properties on the regular roll that are acquired by various exempt organizations after the lien date (January 1) but prior to the beginning of the fiscal year (July 1). It allows for a similar cancellation or refund of taxes for organizations that do not come into existence until after the lien date and thereafter acquire properties before the beginning of the fiscal year.

For organizations that acquire properties after the fiscal year begins (on or after July 1), the taxes for that fiscal year are either canceled or refunded in proration to the number of days in the fiscal year that the property was owned by the organization. To receive the cancellation, refund, or proration, an application for the exemption must be filed within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier." For example, this means that for a property acquired August 7, 2011, a claim must be filed by November 29, 2011 to have the full amount of the prorated exemption cancelled or refunded (within 90 days of September 1, 2010). However, if an

organization does not file a claim within this time period but files an exemption claim afterwards, late-filed penalties may apply, with the maximum tax not to exceed \$250.

With respect to the disabled veterans' exemption, Sections 276.2 and 276.3 together effectively allow for the seamless transfer of the exemption from one home to another by immediately cancelling the exemption on the prior home and allowing a new exemption to be filed on the new home. Specifically, Section 276.2 allows an exemption claim to be filed for property acquired after the lien date. Section 276.3 provides for the termination of the exemption when an individual sells or otherwise transfers the property to a person ineligible for the exemption. For other exemptions, Section 271 allows an organization to file a claim for refund for property acquired after the lien date.

In the case of a supplemental assessment, Section 75.23 addresses the issue that an exemption does not apply to property as of the date of change in ownership if the transferee does not qualify. Confusion has arisen since Section 75.23 applies to all exemptions, including the provisions of Sections 276.2 and 276.3. Termination of the disabled veterans' exemption in Section 276.3 was added in 2000 to a section following the statute that addresses eligibility for property acquired after the lien date. Section 75.23 was added in 2005 to provide that the exemption does not apply when property is sold and supplemental assessment is issued, but it doesn't expressly provide that the exemption shall be terminated. The current statutes are disjointed resulting in confusion for tax practitioners. The logical sequence would be to place the termination of the exemption statute after the eligibility statute (Section 271).

PROPOSED LAW

This provision repeals Section 75.23 and adds Section 271.5 to the Revenue and Taxation Code to clarify that property tax exemptions cease as of the date of sale or transfer of the property. In the case where the new owner of the property qualifies for any exemption, then an application for the applicable exemption on the new property would be filed with the assessor as provided in Section 271.

COMMENT

This new section would be added immediately following Section 271, the statute that allows for a property tax exemption to be applied to property acquired after the lien date, which would be consistent with the statutes that provide for the termination of the disabled veterans' exemption. As a result of adding this section, Section 75.23 becomes duplicative and Section 531.1 requires amendment to provide for an escape assessment when the exemption has been erroneously allowed to a property not eligible.

DISABLED VETERANS' EXEMPTION – FILING PERIOD
Extend the time a claimant may file for the exemption
upon a property becoming newly eligible after the lien date.
Revenue and Taxation Code Section 276.2

CURRENT LAW

Current law provides for the disabled veterans' exemption to be granted on a property that becomes eligible after the lien date provided a timely and appropriate claim is filed. Section 276.2(a) currently states that a claim must be filed on or before the lien date in the calendar year next following the calendar year in which the property became eligible. Thus an eligible claimant who purchases a property on December 28, 2010 must file a claim by January 1, 2011, which is only four days after the property became eligible. This may not be enough time to gather, complete, and submit the paperwork with the county assessor. In practice, some counties may already allow the extra time to file, but this amendment would clarify the procedure.

PROPOSED LAW

This provision amends Section 276.2 to extend the time a disabled veteran has to file a claim to receive the full amount of the disabled veterans' exemption on a newly eligible property.

COMMENT

This change would give claimants who purchase a property late in the calendar year more time (up to 90 days) to file for the property tax exemption. A claimant who buys a property in early January has nearly a full year to file the required claim and receive the full benefit of the exemption. Conversely, a claimant who buys a home on December 31 only has 1 day to file the claim to receive the full amount of the exemption, otherwise the exemption defaults to a partial exemption.

DISABLED VETERANS' EXEMPTION – ANNUAL NOTICE
Specify that the notice shall be mailed prior to the lien date to those
claimants who received the exemption in the immediately preceding year.
Revenue and Taxation Code Section 278

CURRENT LAW

The disabled veterans' exemption requires low-income filers to annually file before February 15. For the basic disabled veterans' exemption, there is a one-time filing. Current law requires the assessor to mail an annual notice to all recipients of the disabled veterans' exemption in the prior year setting forth the eligibility requirements of the exemption and the circumstances under which a property becomes ineligible. The notification must be returned by June 30 of the year following the year the property became ineligible to avoid penalties and interest. Current law does not provide a more specific time frame as to when this notice shall be mailed to the claimants.

Sections 254.5(d), 256, 256.6, and 257.1 relate to change in ineligibility notices for church, cemetery, religious and certain welfare exemptions. They all specifically state that assessors shall, *prior to the lien date*, mail a notice to every claimant who received the exemption in the immediately preceding fiscal year. The "Calendar of Important Dates" published in the BOE's Property Taxes Law Guide indicates the mailing of the

Disabled Veterans' Change in Eligibility Form to be anytime between January 1 and December 31.

In addition, current law requires the assessor to mail out a change in eligibility notice to all disabled veterans who received the exemption in the immediately preceding year. However, the exemption also is available to the spouse of a deceased veteran. Thus, the requirement to mail a notice to all disabled veterans should instead provide that the notice be mailed to all claimants for the disabled veterans' exemption.

PROPOSED LAW

This provision amends Section 278 to specify that the assessor is to mail the BOE-prescribed form BOE-261-GNT, Change of Eligibility Report, prior to the lien date, similar to the exemptions mentioned previously.

COMMENT

Since claimants are required to notify the assessor on or before June 30 of the year following the year the property became ineligible, this amendment would allow the taxpayer time to return the notice, if required, in a timely fashion to avoid any penalties. In addition, the requirement to mail a notice to all disabled veterans should instead provide that the notice be mailed to all claimants for the disabled veterans' exemption.

CHANGE IN OWNERSHIP STATEMENT PENALTY APPEALS
Clarify that in counties that have established an
assessment appeals board, the appeals board, rather than the
Board of Supervisors, is to hear change in ownership penalty appeals.
Revenue and Taxation Code Section 483

CURRENT LAW

Revenue and Taxation Code Section 463 provides that a 10 percent penalty applies if a person who is required to file an annual property statement fails to file the statement within the time limit specified by Section 441. This section also allows the penalty to be abated if the assessee establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement timely was due to reasonable cause and not willful neglect.

Section 482 provides that a penalty applies if a change in ownership statement, as required by Sections 480, 480.1, or 480.2, is not timely filed. Section 483 allows the penalty to be abated by the county board of supervisors if the assessee establishes to their satisfaction that the failure to file the change in ownership statement timely was due to reasonable cause and not due to willful neglect.

County Boards of Equalization. By the Revenue Act of 1857, the California Legislature designated each county board of supervisors to serve as the county board of equalization. Section 16 of Article XIII of the Constitution, provides in part:

The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county....

Additionally, Section 1620 provides that the board of supervisors of any county may by ordinance create assessment appeals boards for the county to equalize the valuation of taxable property within the county. Thus, in all counties in California either one or more

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assessment appeals boards or a county board of supervisors perform the duties of a local board of equalization. In 19 counties, the board of supervisors also serves as the county board of equalization. While a county board of equalization is comprised of the members of the county board of supervisors, the two boards are distinct constitutional bodies and act in different capacities.

Section 1605.5 (b) states that the appeals boards are to hear and decide issues with respect to penalties assessed under Section 482.

In a recent Letter to Assessors on the Legal Entity Ownership Program (LEOP) penalty process, BOE staff opined that, notwithstanding the Section 483 reference to the board of supervisors, an assessee must make its request for penalty abatement to the local board of equalization or the assessment appeals board. This is consistent with both Rule 302, which specifies that the appeals boards are to hear and decide penalty issues, and Section 1605.5 (b) which says the same thing.

PROPOSED LAW

This bill amends Section 483 to substitute “county board of equalization or the assessment appeals board” for “county board of supervisors” as the body with which to request penalty abatement appeal in the case of failure to timely file a change in ownership statement.

COMMENT

To be consistent with Section 463 and Rule 302, this provision changes Section 483 to expressly provide that the county board of equalization or the assessment appeals board is to abate the penalty for failure to timely file a change in ownership statement.

Related Legislation. SB 507 (DeSaulnier) also proposes to amend Section 483 to clarify that in those counties that have assessment appeals boards, the appeals board rather than the county board of supervisors, are to hear issues related to penalty abatement. While SB 947 addresses both types of penalties (subdivision (a) of 483 for Section 480 related penalties (Section 482(a)) and subdivision (b) of Section 483 for Section 480.1 and 480.2 related penalties (Section 482(b))), SB 507 is limited to the penalties imposed under subdivision (b) of 483, which is applied for failure to file a change in ownership statement with the BOE pursuant to Section 480.1 and 480.2.

STATE ASSESSEE PENALTY ABATEMENT

**Expressly provide in statute that state assessee penalties
for failure to timely provide information may be partially abated.**

Revenue and Taxation Code Sections 830 & 862

CURRENT LAW

Under existing law, state assessees must annually provide certain information to the BOE. Failure to provide this information results in the application of a penalty. The calculation of the penalty varies depending upon the type of information found to be deficient.

Any penalty imposed on a state assessee for failure to provide information is capped at \$20,000,000 of assessed value which, at the general 1% tax rate, means a maximum penalty of \$200,000.

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Under existing law, where an assessee establishes to the satisfaction of the BOE that the failure to file the property statement or any of its parts within the time required was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the BOE may order the penalty abated if the assessee files a written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

The existing statutory language does not expressly authorize the BOE to abate the penalty *in part* and the law is silent on the matter. Webster's defines "abate" to mean "to make less in amount, degree, force, etc." Because Sections 830 and 862 do not expressly address partial abatement, this has caused uncertainty and confusion for property owners and tax practitioners who address this issue infrequently.

PROPOSED LAW

This provision amends Sections 830 and 862 to add the phrase "in whole or in part" to clarify that a penalty for failure to provide timely information can be partially abated.

COMMENT

This provision would expressly provide that a penalty may be abated in whole or in part in accord with the BOE's current administrative practice and serves to provide clarity to property owners and tax practitioners.

AIRCRAFT Update References

Revenue and Taxation Code Sections 1150, 1154, 5303

CURRENT LAW

Certificated Aircraft. Related to the provisions of law for the assessment and taxation of certificated aircraft under Article 6 of Part 2 of the Revenue and Taxation Code (beginning with Section 1150), "certificated aircraft" as defined in Section 1150 means aircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in subdivisions (3), (5), (10), and (19) of Section 101 of Title I of the "Federal Aviation Act of 1958" (P.L. 85-726; 72 Stat. 731), while there is in force a certificate or permit issued by the Civil Aeronautics Board of the United States, or its successor, or a certificate or permit issued by the California Public Utilities Commission, or its successor, authorizing such air carrier to engage in such transportation.

Air Taxi. Section 1154 defines "air taxi" as aircraft used by an air carrier which does not utilize aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds in air transportation and which does not hold a certificate of public convenience and necessity or other economic authority issued by the Civil Aeronautics Board of the United States, or its successor, or by the California Public Utilities Commission, or its successor.

Aircraft. Related to the provisions of law for the assessment and taxation of general aircraft under Part 10 of the Revenue and Taxation Code (beginning with Section 5301), Section 5303 excludes from the definition of "aircraft," aircraft exclusively operated by an "air carrier or foreign air carrier" engaged in "air transportation" while a certificate or permit issued by the Civil Aeronautics Board of the United States or the California Public Utilities Commission (or their successors) authorizing the air carrier to engage in air transportation.

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- The definition of “air carrier” or “foreign air carrier” is by cross reference to the definition in subdivisions (3) and (19) of Section 101 of Title 1 of the “Federal Aviation Act of 1958” (P.L. 85-726; 72 State. 731).
- The definition of “air transportation” is by cross reference to the definition in subdivision (10) of Section 101 of Title 1 of the “Federal Aviation Act of 1958” (P.L. 85-726; 72 State. 731).

PROPOSED LAW

This bill updates the code references in federal law to the appropriate provisions in Section 40102 of Title 49 of the United States Code. It would also update the referenced federal agency to the Federal Aviation Administration and delete the reference to the California Public Utilities Commission.

COMMENT

The amendments simply update and delete obsolete statutory references.

SEPARATE ASSESSMENT REQUESTS

Time period to file applications

Revenue and Taxation Code Section 2821

CURRENT LAW

Revenue and Taxation Code Section 327 provides that the assessor may renumber or re-letter parcels or prepare new map pages to show combinations or divisions of parcels.

Section 2821 allows any person filing an affidavit of interest to apply to the tax collector to have any parcel separately valued for the purpose of paying property taxes. Section 2823 requires the assessor to then determine the separate valuation of that individual interest in the parcel.

Applications requesting separate assessment for the purpose of paying property taxes must be made during the current fiscal year (July 1 to June 30). However, the county board of supervisors may prohibit these applications during the 10 working days preceding each tax installment delinquency date (December 10 and April 10) and during the 10 working days preceding June 30 of each year.

Separate valuations are prohibited under Section 2823(b) when the parcel is covered by a subdivision map filed for recordation with the county recorder after the lien date (January 1) immediately preceding the current fiscal year. However, with respect to requests for separate valuation of new subdivision lots (i.e., parcel splits) created after the lien date, this prohibition can be waived if the board of supervisors adopts a resolution. Typically, a subdivision developer will request that separate assessments be made, so that a separate tax bill would be prepared for each individual lot on an appropriate pro rata portion.

Generally, any subdivision of property for the purpose of sale, lease, or finance is subject to the Subdivision Map Act. Subdivisions of five or more parcels require local government approval of both a tentative subdivision map, which is discretionary, subject to whatever conditions are established by local ordinance, and a final subdivision map, which is ministerial once all of the conditions of the tentative map have been fulfilled. Subdivisions of four or fewer parcels require local government approval of a parcel map,

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which is also discretionary. In either case, once a map is approved by the local government, the clerk of the council or board of supervisors transmits the map to the county recorder for recordation. The county recorder has ten days to accept or reject the map for recordation.

PROPOSED LAW

This bill amends Section 2821 to allow the board of supervisors to accept applications for requests for separate assessment between July 1 and March 31. Thus, in those counties, applications would not to be accepted in the months of April, May, and June.

COMMENT

According to the CAA, this provision is a follow up to legislation the CAA sponsored to amend Section 2823 and included in SB 822 (Ch. 204, Stats. 2009). That bill allowed assessors to create separate valuations of 5 or more lots (i.e., parcel splits) created after the lien date (January 1) that will ultimately be reflected in separate tax bills that are mailed by November 1. (The assessor must complete the roll by July 1.). The CAA states that in order to allow enough time to process an application for separate assessment, from initial processing to the issuance of the resulting tax bill, an application deadline of April 1 is proposed.

DECLINES IN VALUE – EXTRA PROCESSING TIME
Allow floating homes and manufactured homes to
receive a decline in value after the roll has closed.
Revenue and Taxation Code Section 4831

CURRENT LAW

Section 4831(c) gives counties the authority to reduce assessed values, via a roll correction, within one year after the assessment roll is completed and delivered to the auditor. The authority to reduce assessed values after delivery to the auditor is limited to those situations where the assessor failed to properly reflect a decline in the taxable value of the real property pursuant to Section 51(a)(2). The extra time to reduce assessments was enacted to reflect that after a major decline in real estate prices, there is insufficient time to process all the declines in value.

In Letter to Assessors 95/54, BOE staff opined that the authority to reduce values for a decline in value applies only to real property and does not apply to manufactured homes because they are classified as personal property under Section 5801(b)(2). Similarly, Section 229 provides that a floating home is not a vessel but is treated as real property under Section 229 for property tax assessment purposes.

In actual practice, it is likely that many counties grant a decline in value to these property types after the roll is closed, as it would be inequitable to do otherwise.

PROPOSED LAW

This provision amends Section 4831 to allow an assessor to correct the roll to apply a decline in value to floating homes and manufactured homes.

COMMENT

This provision is purely a housekeeping change.

PRIVATE RAILROAD CAR TAX
Raise the statutory threshold from more than \$15,000
to more than \$50,000 for requiring a 10-day public record of
proposed determinations prior to granting refunds or cancellations of tax.
Revenue and Taxation Code Sections 11551 & 11596

CURRENT LAW

Revenue and Taxation Code Section 11551 prescribes the manner in which refunds are to be made with respect to the Private Railroad Car Tax. Once the BOE has made a determination that a person has made an overpayment, Section 11551 allows the BOE to credit the overpayment against any current liabilities the person owes to the BOE, and then authorizes the BOE to refund the difference, if any, to the person who made the overpayment. Section 11551 also requires the BOE to prepare a public record for determinations over a certain amount. Under the existing statute, a determination to grant a refund over \$15,000 must be available as a public record for at least 10 days prior to the effective date of the determination in order to fulfill the public record requirement.

However with the exception of the Private Railroad Car Tax, all other tax and fee programs administered by the BOE have a threshold of over \$50,000:

- Sales and Use Tax – Section 6901
- Use Fuel Tax – Section 9151
- Insurance Tax – Section 12977
- Cigarette and Tobacco Products Tax – Section 30361
- Alcoholic Beverage Tax – Section 32401
- Timber Yield Tax – Section 38601
- Energy Resources Surcharge – Section 40111
- Emergency Telephone Users Surcharge – Section 41100
- Hazardous Substances Tax – Section 43451
- Integrated Waste Management Fee – Section 45651
- Oil Spill Response, Prevention, and Administration Fees – Section 46501
- Underground Storage Tank Maintenance Fee – Section 50139
- Fee Collection Procedures Law – Section 55221

Revenue and Taxation Code Section 11596 prescribes the manner in which cancellations are to be made with respect to the Private Railroad Car Tax. Once the BOE determines that a person has made an overpayment, Section 11596 allows the BOE to credit the overpayment against any current liabilities the person owes to the BOE, and then authorizes the BOE to cancel the difference, if any. Section 11596 also requires the BOE to prepare a public record for determinations over a certain amount. Under the existing statute, a determination to grant a cancellation over \$15,000 shall be available as a public record for at least 10 days prior to the effective date of the determination in order to fulfill the public record requirement.

PROPOSED LAW

This provision amends Sections 11511 and 11596 to raise the threshold for the public record requirement from an amount in excess of \$15,000 to an amount in excess of \$50,000 to conform the statutory limit for Private Railroad Car Tax refunds and cancellations to those in effect for other tax programs administered by the BOE.

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COMMENT

There is no administrative reason for these taxpayers who are owed \$50,000 or less to have to wait for their refunds any longer than other taxpayers owed money by the BOE.

COST ESTIMATE

Any costs incurred by the BOE associated with this measure would be absorbable. These costs would include notifying affected stakeholders and taxpayers, updating BOE's rules, revising publications, and answering inquiries from the public.

REVENUE ESTIMATE

The revenue impact associated with the provisions of this bill is negligible.

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